"purchase" must mean that the option to purchase which was given, referred, if at all, to the three vehicles in these three lease agreements and could not refer to the subsequent leasings. No similar offer had been shown by the appellants to have been made in any other document or letter. These later leasings were therefore not qualified by any offer to purchase.

The appeal is therefore allowed in part, to the extent that unconditional leave to defend will be given the appellants, in respect of the three agreements referred to in the letter of August 21, 1975 but the leave to sign final judgment against both appellants in respect of the equipment in the remaining leasing is upheld.

Before leaving the appeal, we have to refer to a notable omission which appeared to have escaped the notice of counsel at the appeal. It concerned the failure of the judge when he allowed the appeal from the Senior Assistant Registrar to deal fully with the Order 14 application. The application was for the whole of the claim, that is, for arrears of rentals and for rentals for the unexpired remainder of the periods of the leases. The judge merely awarded the full sum for past rentals. He did not indicate in his note of the order he made what he proposed in regard to the future rentals. No cross-appeal by the lessors had been lodged or notice of such cross-appeal given: Rules 9(1) and (2) Federal Court (Civil Appeals) (Transitional) Rules, 1963: Neither did they by their counsel ask for the leave of this court to contend that the decision of the High Court should be varied to include the future rentals in respect of the equipment whose leases are not tainted by breaches of the Hire-Purchase Act, or such damages as flowed from the lessees' breach of the agreements.

Insofar as this claim for the rents for the unexpired period of the lease, contractually agreed to in clause 19(ii)(b), *supra*, which the learned judge did not rule on, is concerned, reference may be made to a recent decision of this court, written by Eusoffe Abdoolcader J. in *Diamond Peak Sdn. Bhd. & Anor.* v. *Tweedie.*[6] In that case it has held that when an Order 14 application is dismissed, it does not mean that the statement of claim is struck out and if the court purports to do so, its order is bad and must be set aside. All the court can do where leave to defend is properly to be given is to give such leave and exercise, if it chooses to do so at that stage, its power to give such directions as to the future conduct of the action as might be given under Order 30 Rules of the High Court.

At this stage we do not wish to say anything about the proprietary of the claim for the agreed rentals for the unexpired period of the leases, but Eusoffe Abdoolcader J. dealt with that question in his judgment in the Ipoh High Court Civil Suit No. 137/1977,[5] *supra.*

Both decisions were given on the same day, March 6, 1980. We appreciate of course that they were not available to the Bar when this case was argued in the High Court or known to counsel when it came up before us.

The order of this court therefore is that the leave to the respondents to sign final judgment against both appellants for the arrears of rentals in respect of the six leasings to which the letter of August 21, 1975 does not refer, is confirmed, in such sum as the parties will arrive at from the relevant documents with interest thereon at the agreed rate up to the date of repossession, and in one case, up to the date of return and further interest at 12% p.a. on such arrears from the date of repossession or return as the case may be to the date of payment. The judgment should also include the repossession expenses: clause 19(ii)(c). Leave to defend will be given to the appellants in respect of the three vehicles in the leasing agreements mentioned in the letter of August 21, 1975. This must mean leave to defend also in respect of the rentals for the unexpired period of these 3 leases. The order for costs to the respondents in the High Court and before the Senior Assistant Registrar will stand but the costs of the appeal in this court shall be in the cause.

The application for stay is refused.

Order accordingly.

Solicitors: *Ng Ek Teong & Partners; Skrine & Co.*

UNITED ORIENT LEASING CO. SDN. BHD. v. PERDANA PROPERTIES SDN.

[F.C. (Wan Suleiman, Syed Othman & Ibrahim Manan F.JJ.) January 8 & April 2, 1980]

[Kuala Lumpur — Federal Court Civil Appeal No. 218 of 1979]

Practice and Procedure — Execution — Warrant of distress — Claim by owner of goods — Goods leased to tenant — Notice of assumption of goods given by owner — Acknowledgement that goods belong to owner — Distress Ordinance, 1951, ss. 10 & 12.

In this case the Sessions Court at Johore Bahru had levied an execution order against an emporium. A number of refrigerators and other equipments were seized and the appellants claimed that these equipments belonged to them. They gave the emporium notice of assumption of the equipments. Subsequently the respondents took out a warrant of distress in the High Court and distrained the goods already under seizure by the Sessions Court. When this first warrant was discharged, the respondents caused a second warrant of distress to be issued against the emporium. The respondents by their solicitors acknowledged that the equipments belonged to the appellants and requested the Sessions Court to release them to the appellants. The Sessions Court after hearing an objection by the appellants against seizure of the equipments ordered that they be released to the appellants. However, the High Court dismissed the appellant's motion for release of the equipments distrained under the warrant of distress holding in effect that the equipments had been in such situation in the premises of the emporium that the emporium was the reputed owner. The appellants appealed.

Held: (1) on the date when the respondents took out the second warrant of distress they must have been aware of the full circumstances surrounding the equipments. The appellants had given notice of assumption of the equipments and by the notice it must be taken that the appellants as the true owners of the equipment had withdrawn consent and permission of the equipments and were claiming them. The emporium therefore was no longer in such possession of the equipments under such circumstances as to be the still the reputed owner;

(2) the acknowledgement by the solicitors for the respondents must be taken to relate back to the date of the attach-

ment and was a complete admission that the appellants were entitled to the equipments and the emporium had no right to possession.

Case referred to:-

(1) *Re Couston, Ex p. Watkins* (1873) 8 Ch. App. 520.

HIGH COURT.

Wong Kim Fatt for the applicant.

Ong Ban Chai for the respondent.

Cur. Adv. Vult.

Anuar J.: This is an application by way of Originating Motion by United Orient Leasing Company Sendirian Berhad (the applicants) for an order that:—

"All the goods and chattels stated in the Schedule annexed hereto belonging to the applicants and seized by the Bailiff under Distress Suit No. 12 of 1979 in the Honourable Court at the premises of Emporium President and Supermarket Sdn. Bhd. in Johor Tower, Johor Bahru, be released forthwith to the Applicants."

The facts of the case are this. The applicants leased out to Emporium President and Supermarket Sdn. Bhd. (the emporium) a few items of goods and chattels (the said goods) described fully in the Lease Agreement dated August 13, 1979 and May 2, 1979. The emporium suffered execution in the Subordinate Courts in Johor Bahru on September 3, 1979. The respondent caused to be issued a warrant of distress against the emporium for arrears of rent in High Court Distress Suit No. 12/79 dated September 19, 1979. In view of section 20(1) of the Distress Ordinance, 1951 no seizure could be effected on the goods in the emporium. The warrant of distress however was served on the Bailiff of the Subordinate Court who was in possession of the property under the execution order. The applicants filed an objection in the Subordinate Court and the goods were released to the applicants by the learned President on October 22, 1979. The property therefore were deemed to have been attached or seized under the Warrant of Distress No. 12/79. Order 46(a) rule 2(3) of the Rules of Supreme Court applied.

The respondent then made an application by O.M. 31/79 and obtained an order for the matter to be transferred to the High Court. The court ordered that the High Court receive and realise all the goods attached and seized at the premises of the Emporium. The court also fixed a date for the auction of the said goods.

The applicants then filed the present action to have the goods released.

At the hearing of the motion the learned counsel for the applicants submitted that in the first place the seizure is wrongful and bad in law and secondly that the said goods did not belong to the emporium and were therefore wrongly seized.

I will deal with the question of seizure first.

Under section 20(1) of the Distress Ordinance, 1951 any property liable to be seized under a warrant of distress which has already been seized in execution of an order by any court shall not be seized again. But a warrant of distress may be served on an officer in possession of the property under execution order. The officer shall then be liable to pay out of the proceeds of the sale of the goods seized by him to the landlord.

It was argued that under section 20 of the Ordinance the landlord cannot levy execution of property which has already been executed or seized by an order of any court and that the landlord's only right is the payment out of sales of the property.

It has also been argued that Order 46(a) rule 2(1) of the Rules of Supreme Court does not apply to cases of warrant of distress. It was submitted that since Order 46(a) rule 2(1) speaks of "property attached by way of execution" it does not include a warrant of Distress. The applicants' contention was that "execution" is an order after judgment has been given by the court and it does not include "distrain" by a landlord. For that reason it was argued that Order 46(a) rule 2(3) of the Rules of Supreme Court would not apply. Order 46(a) rule 2(3) provides that:—

"If the property is released from prior attachment, it shall be deemed to have been attached and seized under subsequent order or warrant."

With respect I am unable to agree with the submission by the learned counsel for the applicants. Looking at sub-section (3) of section 20 of the Distress Ordinance it is clear that when notice of warrant of distress has been served on an officer in possession of the property attached by way of execution it is open for the execution creditor or execution debtor to apply to the court to discharge or suspend the warrant of distress. It means that the serving of the warrant of distress on the officer in possession of the property has the effect of the property being attached or seized. There is therefore no necessity for the warrant of distress to be re-executed on the property if the property is released from the prior attachment. I am of the view that section 20 of the Distress Ordinance, 1951 read together with Order 46a rule 2 have effect as an attachment and therefore Order 46(a) rule 3 would apply.

The applicant's application is made under section 10(c) of the Distress Ordinance, 1951. The applicants have to satisfy the court that the immediate tenant i.e. the emporium, has no right of property or beneficial interest in the said goods. There is no dispute as to the ownership. The applicants have satisfied the court that the emporium has no right of property or beneficial interest in the said goods. However the provision of section 10 would not apply if the said goods fall under any of the categories of goods under section 12. Among other things section 10 does not apply to goods in the possession, order, or disposition of such tenant by the consent and permission of the true owner under such circumstances that such tenant is the reputed owner thereof. Section 12(1) reads:—

"The provision of section 10 shall not apply:—

(1) to goods belonging to ... or to goods in the possession, order or disposition of such tenant by the consent and permission of the true owner under such circumstances that such tenant is the reputed owner thereof."

The manager of the applicants in his affidavit of October 23, 1979 stated that the said goods were leased out to the emporium by two Lease agreements dated April 13, 1979 and May 2, 1979. The emporiums were in breach of the agreements by not paying the rental punctually. Accordingly the applicants by

letter dated September 30, 1979 gave notice of assumption of immediate possession of the said goods pursuant to article 21(6) of the said Lease agreement.

It should be observed that on September 3, 1979 the said goods were attached by execution of an order of the court. On that date the emporium was still in possession of the said goods. These facts to my mind show that the goods were in such a situation as to convey to the minds of those who know their situation the reputation of ownership.

In *Re Couston, Ex parte Watkins,*[1] Lord Selbourne L.C. discussed at length "reputed owner".

"... The doctrine of reputed ownership does require any investigation into the actual state of knowledge or belief, either of all creditors, or of particular creditors, and still less of the outside world, who are no creditors at all, as to the position of the particular goods. It is enough for the doctrine if these goods are in such a situation as to convey to the minds of those who know their situation the reputation of ownership, that reputation arising by the legitimate exercise of reason and judgment on the knowledge of those facts which are capable of being generally known to those who choose to make inquiry on the subject. It is not at all necessary to examine into the degree of actual knowledge which is possessed, but the court must judge from the situation of the goods what inference as to ownership might be legitimately drawn by those who know the facts...."

In the present case the goods were in the possession of the emporium at the time when they were seized by the court. The only legitimate inference that could be drawn from this is that the emporium is the reputed owner thereof. This being the case the goods fall under the categories of goods listed in section 12 and therefore section 10 does not apply.

The application is dismissed with costs.

From the above judgment the applicants appealed to the Federal Court.

FEDERAL COURT.

R.C. Hoffman (*Wong Kim Fatt* with him) for the appellants.

Ong Ban Chai for the respondents.

Cur. Adv. Vult.

Syed Othman F.J. (delivering the judgment of the Court): On September 3, 1979 the Sessions Court at Johor Bahru levied an execution order against an emporium. Among the goods and chattels seized were refrigerators, bakery and coffee house equipments, scales, labelling machines, kiddie ride machines and cash registers found on the premises. The appellants claimed that these equipments belonged to them. On the same day they gave the emporium notice of assumption of the equipments.

On September 4, 1979 the respondents took out a warrant of distress in the High Court and distrained the goods already under seizure by the Sessions Court. On application by the appellants, the learned trial judge, after a hearing on September 19, 1979 discharged the warrant on the ground, it has been indicated, that no order had been obtained for the issue of warrant of distress and seizure of the equipments was wrongful under section 20(1) of the Distress Ordinance, 1951. On the same day, i.e. September 19, 1979 the respondents caused the present warrant of distress to be issued against the emporium. The warrant was served on the Bailiff of the Sessions Court.

On October 22, 1979 the Sessions Court after hearing an objection by the appellants against seizure of the equipments ordered that they be released to the appellants. But the High Court on November 15, 1979 dismissed the appellants' motion for release of the equipments distrained under the present warrant of distress holding in effect that the equipments had been in such situation in the premises of the emporium that the emporium was the reputed owner.

In dealing with the appeal against the above decision, there is little need to discuss the various arguments raised and authorities cited. The case rests mainly on interpretation of the particular facts. It needs only to be determined whether on the evidence the findings of the learned trial judge can be sustained.

So far as relevant to the present case, section 10 of the Distress Ordinance, 1951 contains power enabling a judge to release a distrained article seized under a warrant of distress issued to recover rent if the applicant satisfies the court that the tenant had no right to property in a distrained article. But section 12(1) creates exceptions. The exception applicable here is that which relates to goods in the possession of a tenant by the consent and permission of the true owner under such circumstances that such tenant is the reputed owner.

There were two affidavits deposing as to facts.

By an affidavit dated October 23, 1979 the appellants' manager said that the equipments belonged to the appellants and were leased to the emporium under lease agreements of April 13, 1979, and May 2, 1979; that the appellants by letter on September 3, 1979 gave the emporium notice of assumption of immediate possession of the equipments; and that on September 26, 1979 and September 27, 1979 the solicitors for the respondents in the warrant of distress and in this appeal and who also acted for the executing creditors in the Sessions Court wrote to the Registrar, Sessions Court, stating that the equipments belonged to the appellants and asked that they be released to the appellants.

A director of the respondents by an affidavit in reply of November 10, 1979 said that the respondents had always been under the impression that the equipments in the premises belonged to the emporium, the two lease agreements were in fact agreements of purchase by the appellants of the equipments and then leasing them back to the emporium.

The learned trial judge's findings which led him to the conclusion that the emporium was the reputed owner read as follows:

"It should be observed that on September 3, 1979 the said goods were attached by execution of an Order of the court. On that date the emporium was still in possession of the said goods. These facts to my mind show that the goods were in such a situation as to convey to the minds of those who know their situation the reputation of ownership."

The points to note here are that on September 3, 1979 the emporium was in possession of the equipments, when the Sessions Court attached them. It was also found that the appellants gave notice of assumption, which should have been on September 3, 1979,

and not on September 30, 1979, having regard to the appellants' affidavit, which was not disputed by the respondents.

It may be accepted that in the circumstances, the notice of assumption at the time it was given could have been for the purpose of forestalling seizure by the court. We are also of the view that under ordinary circumstances the fact that the appellants gave notice of assumption of property without taking any positive steps to recover possession did not erase reputed ownership by the emporium at the time. The law appears to be that even if there is a termination of agreement, goods remaining in the possession of the tenant may still be within the reputed ownership of the tenant and liable to distress. But in the present case, there are other circumstances which should have been considered.

Although as at September 3, 1979 the emporium could be considered to be the reputed owner, the Sessions Court took over possession by the execution order, and the effective warrant of distress was only taken out on September 19, 1979. The material date to determine such possession as to make a tenant the reputed owner of a distrained article is immediately before and at the issue of the warrant of distress. The question which should be considered is whether after September 3, 1979 the emporium continued to be in such possession of the equipments under such circumstances that the emporium was still the reputed owner.

The evidence shows there was a change of circumstances brought about by the following events. On September 4, 1979 the respondents took out the first warrant of distress and apparently also distrained the equipments already under seizure by the Sessions Court the previous day. On application by the appellants, the learned trial judge, after a hearing on September 19, 1979 discharged the warrant on the ground indicated above. On this date when the respondents took out the present warrant of distress, they must have been aware of the full circumstances surrounding the equipments: the appellants had given notice of assumption of the equipments. The appellants were in no position to take steps to assume possession as the equipments were under attachment by the Sessions Court. By the notice it must be taken that the appellants as the true owners of the equipments had withdrawn consent and permission from the emporium being in possession of the equipments and were claiming them. There is nothing to show that the respondents were not aware of this notice even when they took out the warrant of distress on September 4, 1979. The indications are that the incorrect finding that this notice was given on September 30, 1979, instead of September 3, 1979 must have led the trial court to conclude that up to September 30, 1979, well after the present warrant of distress, the emporium still had possession of the equipments, subject to the Sessions Court attachment. Further, what is crucial to the appellants' right is that when the present warrant of distress came up for hearing on November 15, 1979, the solicitors of the respondents had already on September 26 or 27, 1979 acknowledged that the equipments belonged to the appellants and requested the Sessions Court to release them to the appellants. The acknowledgment must be taken to relate pack to the date of attachment and is a complete admission that the appellants were entitled to the equipments and the emporium had no right to possession. Nowhere in the judgment, did the learned trial judge advert to this admission.

Appeal allowed. Equipments to be returned to the appellants. Costs to the appellants. Deposit to be refunded to appellants.

Appeal allowed.

Solicitors: *Allen & Gledhill; Ong Ban Chai & Razak.*

PUBLIC PROSECUTOR v. MUNUSAMY

[F.C. (Suffian L.P., Raja Azlan Shah C.J. (Malaya) & Hashim Yeop A. Sani J.) March 18, 19 & April 5, 1980]

[Kuala Lumpur — Federal Court Criminal Reference No. 4 of 1978]

Criminal Law and Procedure — Appeal — Issuing certificate required by law knowing it to be false — Concurrent findings of fact — Witness for prosecution impeached — Application to cross-examine witness refused — No failure of justice — Criminal Procedure Code (F.M.S. Cap. 6), s. 173(e) — Penal Code, ss. 193 & 197.

Immigration — Special pass — Whether "certificate" within s. 197, Penal Code — Immigration Act, 1963 — Immigration Regulations, 1963, reg. 14(3).

Penal Code, ss. 193 & 197 — Issuing certificate required by law knowing it to be false.

In this case the respondent had been convicted by the learned Magistrate for an offence under section 197 of the Penal Code for issuing a certificate which is required by law to be given knowing that it was false on a material point. On appeal the High Court allowed the appeal on the sole ground that the special pass issued in this case was not a certificate required by law to be given under section 197 of the Penal Code. The Public Prosecutor applied that the point of law be referred for the decision of the Federal Court and the Federal Court decided that the special pass was a certificate required by law within the meaning of section 197 of the Penal Code — see [1979] 2 M.L.J. 286. The whole case was then reargued as a regular appeal.

Held: (1) in this case there had been concurrent findings of facts in the Lower Courts and the Federal Court should not therefore interfere, as it was not shown that there was a miscarriage of justice or violation of some principle of law or procedure;

(2) the refusal to allow a witness for the prosecutor who had been impeached to be cross-examined by the accused did not constitute a misdirection and even if it was, the Federal Court has power to dismiss the appeal, as there was no failure of justice.

Cases referred to:-

(1) *Public Prosecutor* v. *Munusamy* [1979] 2 M.L.J. 286.

(2) *Lim Tong* v. *Public Prosecutor* [1938] M.L.J. 41.

(3) *Tengku Mahmood* v. *Public Prosecutor* [1974] 1 M.L.J. 110.

(4) *Rameswar Koer & Ors.* v. *Bharat Pershad Sahi* 4 Cal. W.N. 18.

(5) *Wong Thin Yit* v. *Mohamed Ali* [1974] 1 M.L.J. 1.

(6) *Hitam bin Abdullah* v. *Kok Foong Yee & Anor.* [1974] 1 M.L.J. 193.

[The following cases were also cited in argument: *Jayaram* v. *R.* [1956] M.L.J. 224; *Bhuboni Sahu* v. *King* A.I.R. 1949 P.C. 257, (1949) L.R. 76, I.A. 147, 157; *In re Howgate & Osborn's Contract* [1902] 1 Ch. 451; *Tammanna Kori* v. *Parappa Kori* A.I.R. 1945 P.C. 111; *Abdul Rahman* v. *Public Prosecutor* [1940] M.L.J. 55].

FEDERAL COURT.

Faidz bin Mohamad Darus (Deputy Public Prosecutor) for the appellant.